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January 22, 2021

Via Email and US Postal Service

U.S. Environmental Protection Agency
Dion Novak, Remedial Project Manager (SR-6J)
77 West Jackson Boulevard
Chicago, IL 60604

Re: TBH, LLC response to Special Notice Letter re Franklin Street
Groundwater Site

Dear Mr. Novak:

Our firm represents TBH, LLC ("TBH") in relation to EPA's November 24, 2020, Special Notice of Liability letter ("SNL") regarding 780 Brookside Drive, Spencer, Indiana (the "BSC Site") and the Franklin Street Groundwater Site ("Franklin St. Site").

TBH is declining EPA's invitation to participate in funding an RI/FS for the Franklin St. Site and to reimburse EPA for its past costs. As explained more fully below, there are a number of reasons why TBH has no liability with respect to the Franklin St. Site.

Background

James and Sally Vance began a business named Van-Tec, Inc. ("Van-Tec") that manufactured disposable urological products at the BSC Site in the 1980s. These devices included stents, dilators and stem retrieval baskets for kidney stones. The Vances owned the BSC Site and leased it to Van-Tec until 1988 when Van-Tec was purchased by Boston Scientific Corp. ("BSC"). BSC has continuously leased the BSC Site from 1988 and continues to do so today. TBH became BSC's landlord on December 28, 2017, when title to the realty was transferred to TBH. Thus, TBH has only been the owner of the BSC Site for the last 3 years.

The following Phase I Environmental Site Assessments of the BSC Site have been performed since operations began in 1986:

- October 29, 1990, ATEC Phase I ESA
- August 27, 1993, ATEC Phase I ESA
- November 11, 1996, ATEC Phase I ESA
- November 29, 2018, Wilcox Environmental Phase I ESA

Each of the Phase I assessments included a thorough inspection of the BSC Site and BSC's operations and waste handling practices. None of the Phase I reports revealed any recognized environmental conditions or other activity indicating impacts to the environment had occurred.

The Franklin St. Site was listed on the NPL in 2018 because of contamination detected in municipal wells operated by the Bean Blossom/Patricksborg Water Corporation. Tetrachloroethylene ("PCE") was first detected in the wellfield in 2011---about eight years before TBH became the owner of the BSC Site. A treatment system consisting of air strippers was added in 2016-2017 which has eliminated any trace of VOCs in finished water. The wellfield is approximately 1 mile away from the BSC Site.

BSC has reported that it has no record of ever using PCE or trichloroethylene at the BSC Site.

TBH is not liable under CERCLA for contamination at the Franklin St. Site

For TBH to be liable for contamination at the Franklin St. Site two conditions must be met. First, it must have owned the BSC Site at a time when contaminants were released to groundwater. Second, those same contaminants must have reached the Franklin St. Site.

(1) There have been no releases of PCE at the BSC Site while owned by TBH, or at any other time.

Here there is no evidence that there have ever been any releases of contaminants at the BSC Site into the environment, let alone during the last 3 years while TBH has been the owner. Van-Tec's and BSC's operations involved clean, light industrial manufacturing. Manufacturing medical devices requires a hygienic, controlled sanitary environment. Both TBH and BSC reported in their respective Section 104(e) responses that they have no knowledge of any contaminant releases or spills to the environment. Similarly, the four Phase I ESAs performed at the BSC Site from 1990 through 2018 show no evidence of contamination at or emanating from the facility. For TBH to be liable, the BSC Site must be shown to be a source of ongoing releases of PCE to groundwater. There is absolutely no evidence of any such releases currently or historically.

(2) Even if there had been a release, there is no evidence any contaminants have ever left the BSC Site.

The only testing done to date shows no evidence of contamination in groundwater leaving the BSC Site. The only “evidence” is presented in the Affidavit of Nick Cooper (“Cooper Affidavit”) which was relied upon by EPA in preparing the SNL. In the Cooper Affidavit, it shows that monitoring well E2W52, directly down gradient of the BSC Site, was non-detect for chlorinated VOCs like PCE, which has been found in groundwater at the Franklin St. Site.¹ Well E2W52 was also designated as a “Background” sample in EPA’s January 2018 HRS Documentation Record (“HRS Report”) because it was outside the Franklin St. Site presumed groundwater plume. The BSC Site is even further removed from the Franklin St. Site plume and never should have been identified by EPA as a potential source.

BSC has stated that it has no record of using PCE during its over 30 years of operations at the BSC Site. ***It is inconceivable that a sophisticated medical device manufacturer like BSC, that has an internal Environmental Health and Safety division, would have released PCE at the BSC Site during the last 3 years while TBH has been the owner.*** Moreover, even if there had been releases from a pre-existing source on site during the last 3 years, that contamination would not arrive at the Franklin St. Site for many years.

Given the complete absence of evidence of releases to the environment from the BSC Site, or evidence of any contamination ever migrating from the BSC Site—let alone within the last 3 years, TBH cannot be liable for conditions at the Franklin St. Site.

The Franklin St. Site was most likely contaminated by historic dry cleaner operations

The Cooper Affidavit and the HRS Report strongly suggest the source of contamination at the Franklin St. Site was historic releases from dry cleaners near the municipal wellfield. The BSC Site is far beyond the 10-year groundwater time of travel established by Indiana’s Wellhead protection program. Several other sources, including former dry cleaners, are within the 5 and 10-year time of travel areas. It is common knowledge that dry cleaners have historically used and released PCE in their operations. EPA’s efforts to find a source should be focused on known users of PCE, like dry cleaners, who are notorious for contaminating groundwater.

There is a literal “laundry list” of dry cleaners within the 5-year time of travel of the municipal wellfield, including: Ranard’s Cleaners, Miller Cleaners, Dunigan

¹ The Cooper Affidavit states that the sample was analyzed outside of the applicable holding time. Nevertheless, it is the only piece of evidence that exists regarding groundwater near the BSC Site.

U.S. Environmental Protection Agency
Dion Novak, Remedial Project Manager (SR-6J)
January 22, 2021
Page 4

Cleaners, Richardson Cleaners, Spencer Coin Laundry and Owen Valley Cleaners. Moreover, these dry cleaners operated from 1948 until 2003. Thus, their operations took place during an unregulated 30-year period of time when dumping PCE out the back door was common place and not illegal. Clearly, the source of PCE in the wellfield is obvious and it is not the BSC Site.

Conclusion

TBH has no CERCLA liability because there is no evidence of any contaminant releases during the last 3 years or at any other time.

TBH has no CERCLA liability because there is no evidence that the BSC Site is a source of contaminated groundwater migrating to the Franklin St. Site.

As you know, EPA's speculative allegations against TBH has had a substantial adverse impact on a significant business opportunity. EPA should do the right thing and withdraw the SNL, or at least, acknowledge in writing that it agrees there is no basis for CERCLA liability with respect to TBH.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Deveau".

Frank J. Deveau

FJD/lg

cc: Karen Vance
Nicole Wood